

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
OCT 24 2014
Clerk, U.S. District Court
District Of Montana
Missoula

THOMAS J. PETERSEN,

Petitioner,

vs.

ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondent.

CV 14-47-H-DLC-RKS

ORDER

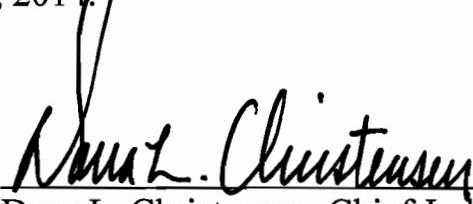
United States Magistrate Judge R. Keith Strong entered Findings and Recommendation on August 25, 2014, recommending that the petition be dismissed without prejudice for failure to exhaust state judicial remedies. Petersen failed to timely object to the Findings and Recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court adopts Judge Strong's findings and recommendation in full.

Defendant filed his habeas petition prior to filing his petition for postconviction relief in Montana state trial court. Defendant must exhaust his state judicial remedies before he brings his habeas action in federal court. *Rose v.*

Lundy, 455 U.S. 509, 520 (1981); *Slack v. McDaniel*, 529 U.S. 473 (2000). A certificate of appealability is not appropriate in this case. *Gonzalez v. Thaler*, 132 S.Ct. 641, 648 (2012).

IT IS ORDERED that Judge Strong's Findings and Recommendation (Doc. 6) are ADOPTED IN FULL. Petersen's Petition (Doc. 1) is DISMISSED WITHOUT PREJUDICE. The Clerk of Court is directed to enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure and close this case. A certificate of appealability is DENIED.

Dated this 24th day of October, 2014.



Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court